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JONATHAN MILLER
Secretary

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Commissioner

In the matter of:

[REDACTED] INC.

Contact: [REDACTED]
[REDACTED] Inc.

FINAL RULING NO. 2010-55
August 31, 2010

Commercial Watercraft Property Tax Assessment
January 1, 2008 to December 31, 2008

FINAL RULING

The Kentucky Department of Revenue currently has an outstanding Commercial Watercraft Property Tax assessment against [REDACTED] totaling \$ [REDACTED] (plus applicable interest and penalties) for the assessment date of January 1, 2008. A breakdown of the assessment is shown in the chart below:

Tax Year	Tax Due	Interest As of 08/31/10	Penalty As of 08/31/10	Total Due As of 08/31/10
January 1, 2008	\$ [REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]

[REDACTED] Inc. (" [REDACTED] ") is a tugboat and marine towing service. [REDACTED] protested the outstanding assessment in a letter dated [REDACTED], 2009, disputing ownership and operation of commercial watercraft equipment in Kentucky.

[REDACTED] contended that it operated chartered river equipment in the [REDACTED] River and the [REDACTED] Gulf Coast from [REDACTED], 2008 through [REDACTED], 2008. Further, [REDACTED] claims that no equipment was operated in Kentucky. Therefore, [REDACTED] protested the taxation of the watercraft, claiming the property was neither owned nor operated in Kentucky.

By letter dated ██████████, 2010, the Department requested one of the following: a revised claim value with supporting documentation, a settlement offer, a request for a final ruling, or a request for a protest conference. The Department made a second request on ██████████, 2010 providing an additional thirty (30) days to respond. ██████████ responded to the Department in a letter dated ██████████, 2010 stating:

██████████ operated chartered river equipment in the ██████████ River and the ██████████ Gulf Coast for ██████████/2008 thru ██████████/2008. No equipment was operated in KY. How evaluation for the value of this equipment was established is unknown.

██████████ failed to provide the requested information in its ██████████, 2010 response. Thus, the Department sent a third request dated ██████████, 2010 for further specific documentation to confirm that the watercraft in question did not navigate Kentucky waterways. To date, no response has been received.

At issue is whether ██████████, Inc. has complied with the requirements of KRS 131.110(1), which states in pertinent part:

The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the department may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

The Kentucky courts have held that this statutory provision imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the Department with “something more substantial than mere denials of tax liability.” Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, 698 S.W.2d 528, 530 (Ky.App., 1985). In order to make a valid protest, a taxpayer must “provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration.” Id. at 529.

The courts have further held that KRS 131.110(1) is “mandatory in nature” and that failure to submit documentation as it requires will result in the taxpayer’s loss of the right to further review of the assessment or refund denial in question. Scotty’s Construction Co. v. Revenue Cabinet, 779 S.W.2d 234 (Ky.App., 1989). In both Scotty’s Construction and Eagle Machine, the taxpayers failed to provide any substantial information in support of their denials of tax liability, despite being given ample opportunity to do. The same is true in this matter.

Therefore, the outstanding Commercial Watercraft Personal Property Tax assessment totaling \$██████████ (plus applicable interest and penalties) is deemed legitimate liabilities of ██████████, Inc. due to the Commonwealth of Kentucky.

This letter is the final ruling of the Kentucky Department of Revenue.

APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner's or appellant's position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; and

4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET



E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue